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In re Application of
MEARS et al.
Application No.: 09/763,089
PCT No.: PCT/US99/18738
Int. Filing Date: 18 August 1999
Priority Date: 18 August 1998
Attorney Docket No.: 29925-152086
For: APPLICATOR AND DISPENSING
DEVICE USING SAME

DECISION ON

PETITION

UNDER 37 CFR 1.181

This decision is in response to applicants' "Response to Notification and Request for Reconsideration," filed 29 May 2002. It has been treated as a petition under 37 CFR 1.181.

BACKGROUND

On 18 August 1999, applicants filed international application PCT/US99/18738, which claimed a priority date of 18 August 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 17 March 2000, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 20 February 2001 (18 February 2001 being a Sunday and 19 February 2001 being a legal public holiday).

On 16 February 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, a first declaration of inventors identifying Harvey Levine and Lawrence Levine as the inventors and a second declaration of inventors identifying Christopher Mears and Richard F. Gray as inventors.

On 15 March 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that the oath or declaration submitted on 16 February 2001 was defective because the inventors were not identified.

On 15 June 2001, applicants submitted a response to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371. The response was accompanied by, *inter alia*, copies of two NOTIFICATION OF THE RECORDING OF A CHANGE (Form PCT/IB/306) from the International Bureau, a first page of a declaration identifying Christopher Mears and Richard Gray as inventors and signed by Christopher Mears, another first page of a declaration

identifying Christopher Mears and Richard Gray as inventors and signed by Richard Gray, and a second page of a declaration identifying Ralf Zissel, Harvey Levine, and Lawrence Levine as inventors and signed by Ralf Zissel.

On 03 July 2001, the USPTO mailed a NOTIFICATION OF A DEFECTIVE RESPONSE indicating that the response filed by applicants on 15 June 2001 did not complete the requirements set forth in the NOTIFICATION OF MISSING REQUIREMENTS mailed 15 March 2001.

On 20 July 2001, applicants submitted a "RESPONSE TO NOTIFICATION OF A DEFECTIVE RESPONSE" indicating that a supplemental response had been filed on 02 July 2001. The submission filed 20 July 2001 also included a second page of a Declaration signed by Harvey Levine and Lawrence Levine.

On 18 December 2001, the USPTO mailed a NOTIFICATION requiring an oath or declaration in compliance with 37 CFR 1.497(a)-(b) within a one-month extendable time period. The Notification indicated that each executed declaration must identify all of the inventors and each submitted declaration must be complete, even if executed by only one of the inventors. The Notification also indicated that the declaration signed by Mr. Zissel contained non-initialed and non-dated alterations and that the difference in the names of the inventor in the published international application (Ralph Zissel in the published international application) and the declaration signed by a Mr. Zissel (Ralf Zissel) must be explained.

On 18 January 2002, applicants filed a submission which was accompanied by, *inter alia*, four declarations of inventors.

On 29 March 2002, the Office mailed Notification again requiring the oaths or declaration as executed by the inventors.

On 29 May 2002, applicants submitted the instant response that has been treated as a petition under 37 CFR 1.181.

DISCUSSION

The declaration submitted 29 May 2002 comply with 37 CFR 1.497(a)-(b).

Applicants' requests for a refund of the one month extension fee and for the January submission to be deemed sufficient are refused. The declarations submitted must be the declarations as executed by the inventor. "The wording of an oath or declaration cannot be amended, altered or changed in any manner after it has been signed." MPEP §602.01. Affixing new pages to the declarations is considered a modification to the declaration subsequent to execution. The proper response to not receiving back all of the pages of the declaration from the inventor would be to contact the inventor and request that the rest of the declaration be forwarded.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application, including accordation of a 35 U.S.C. date of 29 May 2002.



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